

The Court has independent obligation to enforce the respondent's rights.

1. The Court shall:

- A. Appoint counsel who must have a verifiably competent understanding of the legal process of involuntary commitments, as well as the range of alternative, less-restrictive treatment and care options available, pursuant to § 53-21-127(2), MCA.
 - i. Specialized course training, or;
 - ii. Supervised on-the-job training in the duties, skills, and ethics of representing civil commitment respondents.
 - iii. The desires of the respondent at to attorney **must** be taken into consideration §53-21-122 (2), MCA.
 - iv. Upon appointment of counsel, the court **must** provide the respondent with clear and concise information describing the attorney's name and qualifications so the respondent can make an informed decision as to whether to accept appointed counsel or for good cause shown and based on compelling reasons request the appointment of different counsel, or **retain** alternative representation.

2. When representing the respondent Counsel shall:

- A. Meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. The interview should be conducted in private.
- B. Review § 53-21-165, MCA's list of records that must be available to "any attorney charged with representing the patient. [The statute details an extensive list of the respondent's medical and mental history records, treatment plans, and related care provider notes and orders.]
- C. Assure commitment hearing occurs within five days of initial appearance unless counsel requests additional time. See § 53-21-122(2) and (3), MCA. It is imperative that counsel should freely and liberally request a reasonable amount of time for an investigation prior to the hearing or trial.
- D. Consider detention hearing to be held "forthwith" to determine probable cause for detention if detention requested Co. Atty. § 53-21-124, MCA
- E. Consider appointment of a professional person selected by the patient-respondent pending the hearing

- F. Consider objecting to the continued evaluation and treatment by a professional person selected by the respondent pending the hearing. § 53-21-124(3), MCA.
- G. Consider request for a **jury trial** that will, in turn, result in setting aside the time set for hearing and setting the matter on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters.
- H. Consider second a post-trial "disposition" hearing pursuant to §53-21-127(2), MCA after the petition hearing held pursuant to § 53-21-126, MCA. A continuation to fully examine and assert a "least restrictive alternative" at a second hearing may be in the client's best interest, and, therefore, should be pursued by counsel when necessary.
- I. Discuss with his or her client the available options in light of investigations, as well as the practical and legal consequences of those options.
- J. Explain the petition and commitment process and the various rights at issue to the client;
- K. Abide by a client's decisions concerning the objectives of representation and as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Counsel should ascertain, if possible, a clear understanding of what the client would like to see happen (dismissal; a voluntary commitment; formulating and then negotiating with the State a least-restrictive alternative; or agreeing to State-recommended course.) Move for continuance if a client's mental condition and medication prevents counsel from having the ability to learn these factors before a hearing.

3. Counsel shall investigate

- A. Before and after meeting with respondent counsel should conduct a thorough review of all available records. Such inquiry must necessarily involve:
- B. The patient's prior medical history and treatment;
- C. If and to what extent medication has played a role in the petition for commitment;
- D. The patient's relationship to family and friends within the community;
- E. The patient's relationship with all relevant medical professionals involved prior to and during the petition process.
- F. Attempt to interview all persons who have knowledge of the circumstances surrounding the petition, including family members, acquaintances and any other persons identified by the client as having relevant information, and be prepared to call such persons as witnesses.

4. Counsel shall preserve respondent's right to remain silent.

- A. Right to silence conflicts with § 53-21-123 (1), MCA, requiring second examination of up to four hours by the professional person without unreasonable delay.
 - i. Respondent must make a voluntary and knowing waiver right to remain silent prior to the commencement of 2nd examination or;
 - ii. In the alternative counsel must be present during the "examination" similar to a criminal interrogation or a civil deposition.

5. Counsel must serve as a vigorous advocate for the respondent's wishes.

- A. **Presumption is that a client does not wish to be involuntarily committed.** To the extent that a client is unable or unwilling to express personal wishes, the attorney should advocate the position that best safeguards and advances the client's interest, keeping in mind the presumption against a course leading to commitment. In the courtroom, the attorney should engage in all aspects of advocacy and vigorously argue to the best of his or her ability for the ends desired by the client. **In the absence of any evidence of a voluntary and knowing consent by the patient-respondent, evidence that counsel independently advocated or otherwise acquiesced to an involuntary commitment- will establish the presumption that counsel was ineffective.**

6. Foregoing is not an exclusive list of obligations.